

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

KURT Z. STACK o/b/o JOHN DOE,	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 20-350WES
	:	
THE TOWN OF LINCOLN HOUSING	:	
AUTHORITY, et al.,	:	
Defendants.	:	

REPORT AND RECOMMENDATION

PATRICIA A. SULLIVAN, United States Magistrate Judge.

On August 12, 2020, Plaintiff Kurt Z. Stack filed his complaint in the above-captioned case, along with an application to proceed without prepayment of fees (“IFP motion”). ECF Nos. 1 & 2. However, instead of a summons for each of the five named defendants, the complaint attached a single summons for all named defendants. This form was filled in with a single address for all of them. See ECF No. 1-2.

Plaintiff’s IFP motion was granted by a Text Order on August 24, 2020, in which the Court instructed the United States Marshals Service to serve Plaintiff’s summons and complaint on each of the named defendants. See Text Order of Aug. 24, 2020. To implement this Order, the Clerk’s Office sent Plaintiff a letter advising him that, before the Marshals Service could serve the complaint, he would need to complete a separate Process Receipt and Return form (USM-285) and summons for each named defendant. Mailed on August 24, 2020, this letter provided instructions regarding how to fill in the forms, which were included with the letter. See ECF No. 4. When nothing was filed, the Clerk’s Office followed its letter with emails offering Plaintiff assistance with filling in the summons forms so they could be served.

Despite the efforts of the Clerk's Office, Plaintiff did not send the Court the completed summons forms required to effectuate service. November 10, 2020, the Fed. R. Civ. P. 4(m) deadline for Plaintiff to serve the named defendants, came and went. To address Plaintiff's failure to serve, on November 19, 2020, I issued an order directing Plaintiff to show cause in writing within twenty-one days (by December 10, 2020) why the case should not be dismissed for his failure to serve the defendants. In the show cause order, Plaintiff was warned that, if he did not do so, I would recommend to the District Judge that this action should be dismissed without prejudice.

The day after the show cause order issued, on November 20, 2020, Plaintiff called the Clerk's Office. He advised that he thought he had mailed the service documents at the same time he mailed his motion requesting appointed counsel (ECF No. 5), which had been docketed on September 11, 2020. In response, the Clerk's Office told Plaintiff that the Court had received his motion to appoint counsel but had not received the summonses. Plaintiff represented that he would promptly mail the completed summons forms, together with the written response to the show cause order.

Almost another month has now passed since Plaintiff represented that he would send the summons forms and his response to the show cause order. It is now a full week past the December 10, 2020, show cause order deadline. It is now more than four months since Plaintiff filed the complaint. As of this date, Plaintiff has still not responded to the Court's show cause order and has failed to provide the Clerk's Office with the summons forms that he has repeatedly been told are mandatory to effectuate service. Accordingly, as Plaintiff was cautioned, I now recommend that Plaintiff's complaint be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m).

Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days of its receipt. See Fed. R. Civ. P. 72(b)(2); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1st Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Patricia A. Sullivan

PATRICIA A. SULLIVAN
United States Magistrate Judge
December 17, 2020